

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO**

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OHIO POLICE & FIRE PENSION FUND,  
OHIO PUBLIC EMPLOYEES RETIREMENT  
SYSTEM, STATE TEACHERS  
RETIREMENT SYSTEM OF OHIO,  
SCHOOL EMPLOYEES RETIREMENT  
SYSTEM OF OHIO, and OHIO PUBLIC  
EMPLOYEES DEFERRED  
COMPENSATION PROGRAM,

Plaintiffs,

v.

STANDARD & POOR'S FINANCIAL  
SERVICES LLC, THE MCGRAW-HILL  
COMPANIES, INC., MOODY'S CORP.,  
MOODY'S INVESTORS SERVICE, INC.,  
and FITCH, INC.,

Defendants.

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Civil Action No. 2:09-cv-1054

Judge Graham

**NOTICE OF SUPPLEMENTAL AUTHORITY  
IN SUPPORT OF THE RATING AGENCIES' MOTION TO DISMISS**

Defendants Standard & Poor's Financial Services LLC and The McGraw-Hill Companies, Inc. (collectively, "S&P") respectfully submit this Notice of Supplemental Authority to bring to the Court's attention recent appellate review of a decision cited in Sections I.C. and III.D. of the Joint Reply Memorandum in Support of The Rating Agencies' Motion to Dismiss filed by Defendants S&P, Moody's Corp., Moody's Investors Service, Inc., and Fitch, Inc.

On January 21, 2011, the United States Court of Appeals for the First Circuit issued an order affirming in part the dismissal of plaintiffs' putative class action claims in *Plumbers' Union Local No. 12 Pension Fund v. Nomura Asset Acceptance Corporation*,

Case No. 09-2596, slip op. (1st Cir. Jan. 21, 2011) (Boudin, J.) (“*Nomura*”). The accompanying opinion in *Nomura* reviews allegations deemed insufficient to plead that a credit rating was “false or misleading.” *Nomura*, slip op. at 18, 24. Citing appellate decisions from the First and Ninth Circuits, the *Nomura* Court explains that “[credit] ratings are *opinions* purportedly expressing the [rating] agencies’ professional judgment about the value and prospects of the certificates” at issue. *Id.* at 24 (emphasis in original). Notwithstanding plaintiffs’ allegations that rating agency executives conceded, in hindsight, “that the models and data that the rating agencies were using were deficient,” the Court explains, “the ratings were not false or misleading because rating agencies should have been using better methods and data. Defendants are not liable under the securities laws when their opinions, or those they reported, were honestly held when formed but simply turn out later to be inaccurate; nor are they liable only because they could have formed ‘better’ opinions.” *Id.* at 24-25 (noting that “[a] majority of district courts that have considered the issue have dismissed similar claims, and the Sixth Circuit affirmed one such dismissal”). The Court also notes plaintiffs’ allegations, identical to the allegations at paragraphs sixty-six and seventy-one of Plaintiffs’ Complaint in this action, that Moody’s and S&P intentionally inflated ratings to maintain business, but it nonetheless approves the district court dismissal, stating as follows: “[t]hat a high rating may be mistaken, a rater negligent in the model employed or the rating company interested in securing more business may be true, but it does not make the report of the rating false or misleading. If the purchaser wants absolute protection against errors of opinion, the answer is insurance rather than lawsuits.” *Id.* at 26.

January 27, 2011

Respectfully submitted,

By: /s/ Drew H. Campbell  
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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 27, 2011, a true copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing by electronic receipt to the parties.

/s/ Drew H. Campbell  
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